

REPORT OF THE HAZARDOUS WASTE STUDY COMMISSION OF 1983



**REPORT TO THE
1983 GENERAL ASSEMBLY
OF NORTH CAROLINA
1984 SESSION**

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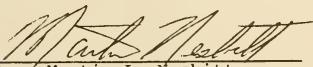
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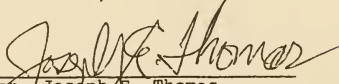
June 7, 1984

TO: The Members of the 1983 General Assembly

The Hazardous Waste Study Commission of 1983 herewith reports to the 1983 General Assembly (1984 Session) on the matter of alternatives to landfilling hazardous wastes. The report is made pursuant to Chapter 926 of the 1983 Session Laws (Senate Bill 701).

Respectfully submitted,


Rep. Martin L. Nesbitt


Sen. Joseph E. Thomas

Cochairmen
Hazardous Waste Study Commission of 1983

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INTRODUCTION

The Hazardous Waste Study Commission of 1983, created by Chapter 926 of the 1983 Session Laws (Senate Bill 701), was required by that legislation to "study alternatives to landfilling hazardous wastes including prevention, reduction, treatment, incineration and recycling." The Commission was also to "study the issue of what can be placed in a hazardous waste landfill without posing a threat to the environment or to the health and safety of the general public." This report is the Commission's response to the mandate to "report to the 1984 Regular Session of the 1983 General Assembly."

The report itself is divided into three parts. The first of these, a history of hazardous waste legislation in North Carolina, is designed to provide a background so that the reader will understand what the General Assembly has done in relation to the hazardous waste issue prior to the formation of the Commission. The second part of the report combines a description of the activities of the Commission with its findings or conclusions. The third part of the narrative incorporates the Commission's recommendations. Finally, attached appendices include a list of members of the Commission, the legislation creating the Commission, proposed legislation to implement the recommendations of the Commission and a bibliography.

LEGISLATIVE HISTORY

I. Solid Waste Management Act

The initial response on the part of the North Carolina General Assembly to the problems of hazardous waste came with enactment of Chapter 1216 of the 1977 Session Laws (Second Session 1978). Chapter 1216 (House Bill 1201) rewrote the Solid Waste Management Act, Article 13B of Chapter 130 of the North Carolina General Statutes to provide for management of hazardous waste. The Commission for Health Services, in the Department of Human Resources, was given the authority to promulgate, with DHR to enforce, "rules concerning the management of hazardous waste." The rules were to provide for:

- (1) establishing criteria for hazardous wastes, identifying the characteristics of hazardous waste and listing particular hazardous wastes;
- (2) record-keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities;
- (3) proper labeling of hazardous waste containers;
- (4) use of appropriate containers for hazardous waste;
- (5) a manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued;

- (6) proper transportation of hazardous waste;
- (7) treatment, storage and disposal standards of performance and techniques to be used by hazardous waste facilities;
- (8) location, design, ownership and construction of hazardous waste facilities;
- (9) plans to minimize unanticipated damage from any treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State;
- (10) proper maintenance and operation of hazardous waste facilities, including requirements for ownership (including ownership by any person or the State), financial responsibility, training of personnel,) continuity of operation and procedures for establishing and maintaining hazardous waste facilities;
- (11) monitoring by owners or operators of hazardous waste facilities;
- (12) inspection or copying of records required to be kept;
- (13) obtaining and analyzing hazardous waste samples and samples of hazardous waste containers and

labels from generators and transporters and from owners and operators of hazardous waste facilities;

(14) a permit system governing the establishment and operation of hazardous waste facilities; and

(15) such additional requirements as may be necessary for the effective management of hazardous waste.

The revised act also provided that rules promulgated by the Commission were to be "no less stringent than the most recent regulations promulgated under the federal act (The Resource Conservation and Recovery Act of 1976, P.L. 94-580, or RCRA) and may be amended from time to time as necessary;" but the act also provided that the state's hazardous waste program was to "be no more comprehensive than the hazardous waste program prescribed under the federal act." Further, rules, regulations and standards were to "be no more stringent than the rules, regulations and standards concerning hazardous waste prescribed under the federal act; and (would) not become effective prior to the effective date of the rules, regulations and standards concerning hazardous waste prescribed under the federal act." G.S. 130-166.21D(b).

The 1979 General Assembly enacted a series of amendments to the Solid Waste Management Act. Chapter 464 of the 1979 Session Laws (House Bill 290) rewrote G.S. 130-166.21D(b) to eliminate reference to "regulations" and eliminate the effective date caveat at the end of the

subsection. The same bill also permitted temporary rule-making authority on the part of the Commission for Health Services but further restricted the stringency of the rules to the level of standards published in the Federal Register in December 1978 and repealed this additional restriction as of March 1981. Chapter 464 also raised the fine for violating the hazardous waste provisions of the article from \$1,000 per day to \$5,000 per day. This figure was raised to \$10,000 per day by the 1981 General Assembly. Chapter 694 of the 1979 Session Laws added G.S. 130-166.18(f) to require public hearing and notice consistent with the Administrative Procedure Act prior to issuance of permits for hazardous waste facilities.

In July 1980, Governor James B. Hunt, Jr. appointed an 18-member Task Force to study Waste Management in North Carolina. Included on the Task Force were legislators, representatives of local government and secretaries of seven state agencies. The recommendations of the Task Force were incorporated into a series of amendments to the Solid Waste Management Act by the 1981 General Assembly. Chapter 704 of the 1981 Session Laws (Senate Bill 443) which also created the Governor's Waste Management Board, discussed below. Chapter 704 amended the Solid Waste Management Act by:

- (1) Defining a "hazardous waste landfill facility";

- (2) Including state and federal agencies in the definition of "person";
- (3) Including in the definition of "solid waste" covered by the act sludges, oils and hydrocarbons, and certain mining wastes which meet the RCRA criteria for hazardous waste;
- (4) Creating G.S. 130-166.17B providing for state ownership of commercial hazardous waste landfill facilities, liability of operators of such facilities, prohibiting units of local government from adopting local ordinances "prohibiting the establishment or operation of a hazardous waste landfill facility which the Governor's Waste Management Board and the Governor have approved," and setting up procedures for approval of such facilities;
- (5) Including "waste reduction" among those facilities over which DHR had authority to promulgate standards for the purpose of special tax classifications or treatment;
- (6) Authorizing the department to collect fees from operators of hazardous waste landfill facilities and to create a fund to defray the costs to the state of monitoring and caring for the facilities;
- (7) amending the act's rulemaking provisions to enable the Commission for Health Services to

promulgate rules to "establish a complete and integrated regulatory scheme in the area of hazardous waste management," and rules relating to funding "for facility closure and post closure monitoring and corrective measures";

- (8) Expending notice and hearing procedures of G.S. 130-166.18(f) to be consistent with federal law and regulations and providing for notice to local governmental authorities when application is made for a hazardous waste facility permit or amendment thereto;
- (9) Amending the section dealing with "imminent hazard" to permit action when such a hazard poses a threat to the environment, rather than just to public health; and
- (10) Making violation of the article a misdemeanor.

Chapter 480 of the 1981 Session Laws amended G.S. 130-166.21 relating to recordation of permits for disposal of waste on land to include hazardous waste facilities within recordation requirements and to require notice of the use of such a facility on any deed or instrument of transfer when any such facility is sold, leased or transferred.

The 1983 General Assembly considered several amendments to the Solid Waste Management Act. Chapter 546 of the 1983 Session Laws (House Bill 554) added requirements that the operator of a hazardous waste landfill facility

"maintain adequate insurance (adequacy to be determined by the Governor's Waste Management Board) to cover foreseeable claims arising from the operation of the facility," that the bottom of a hazardous waste landfill facility "be at least 10 feet above the seasonal high water table and more when necessary to protect the public health and the environment," and that hazardous waste landfill facility operators make monthly reports to the Governor's Waste Management Board and to boards of county commissioners "on the kinds and amounts of hazardous wastes in the facility." Chapter 605 of the 1983 Session Laws (House Bill 79) added to G.S. 130-166.18(c) (8) a requirement "that no hazardous waste landfill facility or polychlorinated biphenyl landfill facility shall be located within 25 miles of any other hazardous waste landfill facility or polychlorinated biphenyl landfill facility."

The 1983 General Assembly also recodified Chapter 130 of the General Statutes, "Public Health," as Chapter 130A. Chapter 891 of the 1983 Session Laws (Senate Bill 141). The Solid Waste Management Act, which had been Article 13B of Chapter 130, became Article 9 of Chapter 130A. With two exceptions, the Article was transferred as it had appeared in Chapter 130. The exceptions were:

- (1) G.S. 130-166.21D(b) limiting state standards to those of the federal law was not recodified into Chapter 130A but remained as part of Chapter 130.
- (2) G.S. 130A-303, "Imminent Hazard," which had been G.S. 130-166.21B was changed to require that the

judgment of the Secretary of DHR that an imminent hazard exists concerning solid waste "be supported by findings of fact made by the Secretary."

A number of legislative proposals were considered by the 1983 General Assembly without passing in either house. Among these were proposals to prohibit landfilling of hazardous wastes (House Bill 12), to provide for a "good samaritan" act (House Bill 1399) and to provide for labeling or identification of toxic or hazardous substances. This latter proposal is the subject of an interim study being conducted by the Legislative Research Commission.

Other proposals were approved by one house or the other and thus remain eligible for consideration by the 1983 General Assembly when it convenes in 1984. These include:

- (1) House Bill 559, which would significantly alter North Carolina's system for regulating hazardous waste landfills, remains in conference committee.
- (2) House Bill 738, providing for strict liability for damages resulting from hazardous wastes, in the Senate Special Ways and Means Committee.
- (3) House Bill 991, providing for encouragement of hazardous waste treatment, also in the Senate Special Ways and Means Committee.
- (4) House Bill 1383, relating to inactive hazardous waste disposal sites, also in the Senate Special Ways and Means Committee.

- (5) Senate Bill 689, directing an executive branch study of hazardous waste, in the House Rules Committee.

Following failure to agree on House Bill 559, the 1983 General Assembly enacted Chapter 926 of the 1983 Session Laws (Senate Bill 701) creating the Hazardous Waste Study Commission of 1983. The Commission was directed to report by May 1, 1984 and to study:

- (1) "alternatives to landfilling hazardous wastes including prevention, reduction, treatment, incineration and recycling;" and
- (2) "the issue of what can be placed in a hazardous waste landfill without posing a threat to the environment or to the health and safety of the general public."

II. Toxic Substances Task Force

On June 8, 1979, the final day of the 1979 General Assembly's first session, two bills were ratified which dealt with hazardous waste. Chapter 916 of the 1979 Session Laws (Senate Bill 373) authorized the Legislative Research Commission "to study the management of waste disposal, hazardous and toxic substances," and other matters. Chapter 981 of the 1979 Session Laws (House Bill 56) added a new Article 13, "Toxic Substances Task Force and Incident Response Procedures," to Chapter 113A (Pollution Control and Environment) of the General Statutes, and

created a "State Task Force on Toxic Substances." The Task Force was made up of designees of the Commissioner of Agriculture and of the secretaries of the Departments of Administration, Human Resources, Crime Control and Public Safety, and Natural Resources and Community Development. The designee of the Secretary of Crime Control and Public Safety was to chair the Task Force. The focus of the Task Force, as well as other sections of Chapter 981, was on incident response and on dumping of toxic substances (the bill made dumping such substances a felony); but the Task Force was also charged, in G.S. 113A-198(c) (5), to "study and make recommendations concerning disposal of and storage sites for toxic and hazardous substances" and, in G.S. 113A-198(c) (4), to "study and make recommendations concerning movement within the state of toxic or hazardous substances."

Among the recommendations proposed by the Legislative Research Commission study in its 1980 interim report were better coordination of environmental programs, budget requests and state laboratories, that a disposal site for hazardous waste be found and that a single agency, the Department of Crime Control and Public Safety, assume responsibility in emergency situations. Chapter 1310 of the 1979 Session Laws (2nd Session 1980) (House Bill 1744) repealed Article 13 of Chapter 113A of the General Statutes and added new subsections to G.S. 143B-476 clarifying the Department's responsibility in emergency situations as well

as the cooperation required on the part of other state agencies and department.

III. The Governor's Waste Management Board

In addition to substantially amending the Solid Waste Management Act, Chapter 704 of the 1981 Session Laws (Senate Bill 443) created the Governor's Waste Management Board, as recommended by the Governor's Task Force on Waste Management (to be distinguished from the task force created by statute in 1979 and eliminated in 1980). The basis of the recommendation to create such a Board came from the need to coordinate activities of a number of agencies affected by and involved in hazardous waste management, including Departments of Agriculture, Human Resources, Natural Resources and Community Development, Commerce, Transportation, and Crime Control and Public Safety as well as the Utilities Commission. The Task Force recommended creation of a Board to oversee management of waste, promote interagency cooperation and monitor programs and progress.

Chapter 704 gave the Waste Management Board the following functions:

- (1) periodically assess the volume, distribution, location and characteristics of hazardous and low-level radioactive waste in the State;
- (2) periodically review the State's waste management system and make recommendations to the Governor,

the General Assembly and agencies on ways to improve waste management;

- (3) study and make recommendations on policy issues such as liability and financial responsibilities (including strict liability) relating to hazardous waste management;
- (4) promote research and development and disseminate information on hazardous waste management;
- (5) establish a waste information exchange;
- (6) promote public education and public involvement;
- (7) periodically evaluate and assess the type and number of hazardous waste facilities and hazardous waste landfill facilities in the State and region;
- (8) annually report to the Governor on activities and recommendations to improve the State's waste management system;
- (9) recommend a recipient for an annual "Governor's Award of Excellence" in the waste management area;
- (10) promote and participate with other states in discussion of regional waste management agreements;
- (11) assist localities in evaluating proposed waste management facility sites;

- (12) make findings and recommendations to the Governor concerning exercise of the State's preemptive powers;
- (13) review privilege license tax rates applied by localities to waste management facilities;
- (14) ensure its members against personal liability for actions taken by the board;
- (15) adopt, modify or revoke rules; and
- (16) study the development of retrievable, above-ground storage facilities for hazardous wastes.

In enacting Part 27, "Governor's Waste Management Board," of Article 3, "Department of Human Resources," of Chapter 143B, "Executive Organization Act of 1973," of The General Statutes, the General Assembly set forth findings to support the need for the state to assume responsibility in the area of hazardous waste management and to preempt local decision in this area. In addition, the findings section declared:

"(c) The General Assembly of North Carolina hereby finds and declares that prevention, recycling, detoxification, and reduction of hazardous wastes should be encouraged and promoted. These are alternatives which ultimately remove such wastes' hazards to human health and the environment. When these alternatives are not technologically feasible, retrievable above-ground storage is sometimes preferable to other

means of disposal of some types of waste until appropriate methods for recycling or detoxification of the stored wastes are found. Landfilling shall be used only when it is clearly appropriate."

Part 27 has been amended twice by the General Assembly since being enacted. Chapter 1191, sections 58-62, of the 1981 Session Laws (Regular Session 1982) amended G.S. 143B-216.12 to make appointment of members of the Board who are appointed by the Legislature consistent with other such appointments made pursuant to the Separation of Powers Act. The 1983 General Assembly amended G.S. 143B-216.10(c), above, by adding the following:

"Hazardous waste landfill facilities and polychlorinated biphenyl landfill facilities shall be detoxified as soon as technology which is economically feasible is available and sufficient money is available without additional appropriation."

COMMISSION PROCEEDINGS AND FINDINGS

The Hazardous Waste Study Commission of 1983 met on seven occasions between October 1983 and May 1984. The deliberations of the Commission can be divided into three areas:

1. Orientation and fact-finding.
2. Preparation of a separate report and recommendations on the question of the establishment of a pollution prevention center. See Resolution 54 of the 1983 Session Laws (Senate Joint Resolution 653). This report was presented to the Legislative Research Commission May 17, 1984.
3. Discussion and preparation of draft legislation to implement the recommendations of the Commission.

At its initial meeting, the Commission adopted a framework for examining the various aspects of hazardous waste management. This framework involves a "hierarchy of alternatives." The committee found the first alternative, prevention, the most preferable method of managing waste. See the Legislative Research Commission Report on Pollution Prevention. The second tier of hazardous waste management, and the second most preferable, is treatment. The least preferable way of managing hazardous waste is disposal. In G.S. 143B-216.10(c) the General Assembly has already

declared it to be the policy of the state "that prevention, recycling, detoxification and reduction of hazardous wastes should be encouraged and promoted" and that "when these alternatives are not technologically feasible retrievable above ground storage is sometimes preferable to other means of disposal...until appropriate methods for recycling or detoxification of the stored wastes are found." The General Assembly has also, in the same subsection, declared that "landfilling shall be used only when it is clearly appropriate." The Commission's findings that retrievable storage is preferable to permanent underground storage or landfilling is thus consistent with earlier statements of state policy by the General Assembly.

The Commission looked carefully at the complex interaction between federal law, state law, federal regulations and the state regulatory framework in an effort to determine what role the state should play.

The Commission found that several state level responsibilities have already been undertaken:

1. The Governor's Waste Management Board serves valuable advisory, coordinating and educational functions. Much of the understanding of the need to prevent and treat hazardous waste has developed through the efforts of the Board.
2. The Solid and Hazardous Waste Branch of the Division of Health Services in the Department of Human Resources serves a regulatory function,

permitting and monitoring hazardous waste facilities and regulating generators of hazardous waste.

3. A number of other state agencies and Boards are involved in efforts to manage hazardous waste. The Department of Agriculture assists farmers in controlling pesticides and other chemicals and their effects. The Department of Natural Resources and Community Development is the lead agency in pollution prevention efforts and monitors the introduction of toxic chemicals into our waters. The Department of Transportation enforces standards to ensure safe transport of hazardous waste and other hazardous substances. The Department of Crime Control and Public Safety has been designated lead agency in the event of a spill or other accident involving hazardous waste. The Board of Science and Technology has assumed a leading role in promoting research efforts designed to assist in pollution prevention. Our universities are actively involved in a number of research activities as well as in efforts to increase public awareness of the problem.

The Commission found, however, that no state agency or organization has been designated to seek and locate hazardous waste treatment facilities. It is to this gap that the

Study Commission has devoted much of its attention. The Commission recognized early in its deliberations that the two major agencies involved in hazardous waste management, the Waste Management Board and the Solid and Hazardous Waste Branch, would not be appropriate agencies to assume this responsibility. To do so would create conflict for any agency involved in regulating such a facility and for the Board because of its role in reviewing appeals by facility operators who challenge local ordinances.

The Commission also heard from representatives of the hazardous waste management industry. The Commission concluded that a privately operated, and closely regulated, hazardous waste treatment facilities are far preferable to any effort by the government to operate such facilities. Repeatedly, however, those who spoke to the Commission testified that despite efforts to increase public understanding, it is clear that public misunderstanding and apprehension about the danger and consequences of a treatment facility has had the effect preventing private efforts to build and operate such a facility. Those representing industries generating hazardous waste agreed with government officials and those who spoke for the waste management industry that there is a great need for treatment facilities and enough waste generated to make such a facility financially attractive to an operator, given the ability to overcome public misunderstanding and resistance. While the Commission concluded that there was a need for the state to

play a role in assuring that a comprehensive treatment facility is sited and constructed, it also found that the criteria for siting a facility should include a number of specific elements to be considered and should be formulated through an open process with public input and participation. In addition, the Commission concluded that any community wherein a treatment facility is to be located should receive assistance to enable it to defray the cost of any cleanup and to train and equip an emergency response team.

The Commission also considered two additional problems associated with hazardous waste: 1) the threshold level of waste generated which causes a generator of hazardous waste to be regulated as a major generator, and 2) the need to find and cleanup abandoned hazardous waste sites or "orphan dumps." The Commission concluded that the current threshold at which a generator is a major generator of hazardous waste, 1000 kilograms per month, should be lowered to 100 kilograms per month to assure that all significant generators are closely regulated for protection of the environment and the citizens' health and safety. In addition, the Commission found that there is a great need to locate and cleanup abandoned hazardous waste sites as well as to be sure that future property owners in the vicinity of these orphan dumps were made aware of their existence.

Finally, the Commission found great need for an overall assessment of the state's needs for hazardous waste

facilities, including the effectiveness of the system for collecting the waste which is generated and moving it to appropriate facilities as well as the cost incurred by local governments in communities where hazardous waste facilities are located.

RECOMMENDATIONS OF THE STUDY COMMISSION

1. The Study Commission recommends that the General Assembly enact legislation to create a Hazardous Waste Treatment Commission to provide for siting, construction and operation of comprehensive waste management facilities with power to issue bonds, if necessary, to finance a facility. The Commission would be made up of nine members, serving four-year staggered terms, appointed by the Speaker of the House (3), the President Pro Tempore of the Senate (3) and the Governor (3). The members would be appointed at the end of January 1985.

2. The Study Commission recommends that the General Assembly provide for action by the Hazardous Waste Treatment Commission according to the following time table:

- A. If there is no permit issued for a comprehensive hazardous waste treatment facility by June 1, 1985, the Treatment Commission will seek private operators and present appropriate sites;
- B. If no permit is issued by January 1, 1986, the Treatment Commission will select a site, purchase or condemn the property and seek private operators to build and operate a facility.
- C. If no permit is issued by June 1, 1986, the Commission will construct a facility and seek a private operator.

D. If no private operator can be found, the Commission, as a last resort, will operate the treatment facility.

3. The Study Commission recommends that the Hazardous Waste Treatment Commission sunset or go out of existence if it finds that the needs of the state in the area of hazardous waste management are being met.

4. The Study Commission recommends that the process by which an operator of a hazardous waste facility appeals a local ordinance which blocks operation of a facility be streamlined; that the Waste Management Board make the decision rather than advise the Governor. The same findings that are required now to preempt the ordinance would be required under the proposal.

5. The Study Commission recommends that the General Assembly enact legislation to create a 180-day time limit for approval or disapproval of an application for a permit to operate a comprehensive hazardous waste treatment facility.

6. The Study Commission recommends that the General Assembly enact legislation requiring the Health Services Commission to develop and adopt, through a process involving public participation, criteria and standards to be considered in location and permitting of hazardous waste facilities by January 31, 1985. The criteria and standards should include all applicable state and federal rules and regulations and the following factors should be considered:

- (a) Acceptability within the community where the facility is to be located or steps which should be taken if community acceptance is not forthcoming;
- (b) Hydrological and geological factors such as flood plains, depth to water table, groundwater travel time, proximity to public water supply watersheds, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines and climate;
- (c) Natural resources such as wetlands, endangered species habitats, proximity to parks, forests, wilderness areas and historical sites, and air quality;
- (d) Local land use whether residential, industrial, commercial, recreational, agricultural, and proximity to incompatible structures such as schools and airports;
- (e) Transportation factors, such as proximity to waste generators and to population, route safety and method of transportation;
- (f) Aesthetic factors such as the visibility, appearance and noise level of the facility.

7. The Study Commission recommends that the General Assembly enact legislation to require that:

- (a) No landfill or long term storage facility is to be established until a treatment facility is operational,
- (b) Hazardous waste must be treated prior to disposal in North Carolina and long term retrievable storage should be used to store residue or ashes,
- (c) Any landfill facility constructed shall meet federal standards,
- (d) Landfill and treatment facilities are to be 25 miles apart, and
- (e) The underground storage of a hazardous waste landfill or long term storage facility have at a minimum the following: a leachate collection and removal system above an artificial impervious liner of at least thirty (30) mils in thickness, a minimum of five (5) feet of clay or clay-like liner with a maximum permeability of 1.0×10^{-7} centimeters per second (cm/sec) below said artificial liner, and a leachate detection system immediately below the clay or clay-like liner.

8. The Study Commission recommends that the General Assembly enact legislation to prohibit the storage of hazardous waste at a hazardous waste treatment facility for over 90 days prior to treatment or disposal and to prohibit disposal of the following in a hazardous waste landfill facility: ignitables as defined in the Resource Conservation and Recovery Act (RCRA), polyhalogenated biphenyls of

50 parts per million or greater and free liquids whether or not containerized.

9. The Study Commission recommends that the General Assembly enact legislation to enable the Solid and Hazardous Waste Branch, Division of Health Services, Department of Human Resources, to:

- (a) Monitor and regulate all generators of 100 kilograms or more per month of hazardous waste (the threshold is now 1000 kilograms or more per month), and
- (b) Locate, catalogue and monitor all surface impoundments and orphan dumps and provide for recordation in the office of the Register of Deeds.

10. The Study Commission recommends that the General Assembly enact legislation to require a hazardous waste facility operator to deposit, through quarterly payments based on a percentage of profits, \$250,000 in trust with the local government where the facility is located. This money would be used to defray the cost of any possible cleanup and a portion and \$50,000 could be used to train an emergency response team.

11. The Study Commission recommends that the General Assembly enact legislation to enable the Waste Management Board to certify comprehensive hazardous waste treatment facilities, i.e. those which:

- (a) are commercial facilities and accept hazardous waste from the general public for treatment;
- (b) are able to treat and dispose of hazardous waste on at least an intrastate regional basis; and
- (c) is located so as to substantially facilitate treatment of hazardous waste for the state.

12. The Study Commission recommends that the General Assembly enact legislation to require the Waste Management Board to provide to the General Assembly by February of 1985 a report to include:

- (a) An analysis of the state's needs for hazardous waste facilities and a plan to meet the needs,
- (b) An analysis of the collection system, recommendations to improve it and a plan to implement the recommendations, and
- (c) An analysis of the cost to local government of hazardous waste facilities.

APPENDICES

MEMBERS

HAZARDOUS WASTE STUDY COMMISSION 1983

Representative Martin L. Nesbitt
Chairman

Representative Wendell H. Murphy

Representative W. Paul Pulley, Jr.

Mr. William E. Holman

Mr. J. Patrick Price

Senator Joseph E. Thomas
Chairman

Senator Aaron W. Plyler

Senator Robert S. Swain

Dr. Theodore R. Rice

Mr. Truman L. Koehler, Jr.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1983

RATIFIED BILL

CHAPTER 926 SENATE BILL 701

AN ACT CREATING THE HAZARDOUS WASTE STUDY COMMISSION OF 1983.

The General Assembly of North Carolina enacts:

Section 1. Creation of commission; membership. There is created in the General Assembly the Hazardous Waste Study Commission of 1983. The Commission shall consist of 10 members appointed as follows:

- (1) Three members of the Senate appointed by the President of the Senate;
- (2) Three members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (3) Two environmentalists, one appointed by the President of the Senate and one by the Speaker of the House of Representatives; and
- (4) Two representatives of industry, one appointed by the President of the Senate and one by the Speaker of the House of Representatives.

The President of the Senate and the Speaker of the House of Representatives shall each designate one of his appointees to serve as cochairman of the Commission.

Sec. 2. Duties of Commission. The Commission shall study alternatives to landfilling hazardous wastes including prevention, reduction, treatment, incineration and recycling. The Commission shall also study the issue of what can be placed in a hazardous waste landfill without posing a threat to the environment or to the health and safety of the general public. The Commission shall report to the 1984 Regular Session of the 1983 General Assembly by May 1, 1984. The report shall include any draft legislation necessary to carry out the recommendations of the Commission.

Sec. 3. Staff; meeting rooms. The Legislative Services Officer shall provide necessary professional and clerical assistance to the Commission. State departments, commissions, boards and agencies shall provide all professional and technical assistance requested by the Commission. The Commission may contract for assistance from non-State personnel as it deems necessary.

The Commission may hold its meetings in legislative buildings with the prior approval of the Legislative Services Commission.

Sec. 4. Subsistence and travel expenses. Members of the Commission who are also members of the General Assembly shall be paid subsistence and travel expenses at the rate set forth in G.S. 120-3.1. Members of the Commission who are officials or employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other members of the Commission shall be paid the per diem and allowances at the rates set forth in G.S. 138-5.

Sec. 5. Appropriation. There is appropriated from the General Fund to the General Assembly the sum of ten thousand dollars (\$10,000) for the 1983-84 fiscal year to carry out the provisions of Sections 1 through 4 of this act.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 22nd day of July, 1983.

JAMES C. GREEN

James C. Green
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

INTRODUCED BY:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NORTH CAROLINA HAZARDOUS WASTE
TREATMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of chapter 143B of the
General Statutes is amended by adding a new Part 12 to read:

"Part 12. North Carolina Hazardous Waste Treatment
Commission.

"§143B-470. Declaration of findings.

The General Assembly of North Carolina hereby finds and
declares that the safe management of hazardous waste, and
particularly the timely establishment of adequate facilities
for the disposal and management of hazardous waste, is one
of the most urgent problems facing North Carolina. The safe
management and disposal of hazardous wastes are essential to
continued economic growth and for protection of the public
health and safety and the environment. Consequently,
cooperation and coordination among the private sector, the
general public and State and local agencies to assure the
prevention of unnecessary waste and the establishment of a
comprehensive and integrated system of adequate treatment
and disposal facilities are essential.

1 The General Assembly of North Carolina hereby finds and
2 declares that prevention, recycling, detoxification and
3 reduction of hazardous wastes should be encouraged and
4 promoted. These are alternatives which ultimately remove
5 such wastes' hazards to human health and the environment.
6 When these alternatives are not technologically or economi-
7 cally feasible, long term retrievable storage is preferable
8 to other means of disposal until appropriate methods for
9 recycling or detoxification of the stored wastes are found.
10 Hazardous waste which cannot be reduced, stabilized or
11 destroyed shall be stored in long term retrievable storage
12 until such methods are found. Hazardous waste must be
13 treated prior to disposal or long term storage in North
14 Carolina. Long term retrievable storage should be used for
15 the storage of the residual or ashes of other treatment of
16 sufficiently low toxicity as to present no significant
17 health or safety hazard in the event of leakage from the
18 facility. Hazardous waste in long term retrievable storage
19 shall be detoxified as soon as the Commission for Health
20 Services determines based upon a preponderance of the
21 evidence that the technology is available at a reasonable
22 cost. Hazardous waste landfill facilities and
23 polychlorinated biphenyl landfill facilities shall be
24 detoxified as soon as economically feasible technology is
25 available and sufficient money is available without addi-
26 tional appropriation. It is the further intent of the
27 General Assembly that hazardous wastes be treated and
28

disposed of in the most cost effective manner while protecting public health and safety and the environment.

"§143B-470.1. Declaration of Purposes.

It is the purpose of this Part to provide for the siting, construction and operation of integrated hazardous waste management facilities to the end that hazardous waste may be treated or disposed of in the most cost-effective manner, while protecting public health and safety and the environment. It is also the purpose of the General Assembly to create a Commission to site, finance, build, lease or operate, or oversee a hazardous waste treatment facility in the event that private enterprise fails to do so within a specified time. It is also the purpose of the General Assembly through powers granted to the Governor's Waste Management Board to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special local or private acts or resolutions; ordinances; property restrictions; zoning laws, rules and regulations; fire laws, rules and regulations; civil defense laws, rules and regulations; public health laws, rules and regulations; and otherwise.

"§143B-470.2. Definitions

Unless the context otherwise requires, the following definitions shall apply to this Part:

(1) 'Commission' means the North Carolina Hazardous Waste Treatment Commission created by this Part.

1 (2) 'Federal act' means the Resource Conservation and
2 Recovery Act of 1976, P.L. 94-580, as amended; codified in
3 Chapter 82 of Title 42 of the United States Code, as amend-
4 ed.

5 (3) 'Hazardous waste' means a solid waste, or combina-
6 tion of solid wastes, as solid waste is defined in G.S.
7 130A-290(18), which because of its quantity, concentration
8 or physical, chemical or infectious characteristics may:

9 a. Cause or significantly contribute to an increase
10 in mortality or an increase in serious irrevers-
11 ible or incapacitating reversible illness; or

12 b. Pose a substantial present or potential hazard to
13 human health or the environment when improperly
14 treated, stored, transported, disposed of or
15 otherwise managed.

16 (4) 'Hazardous waste treatment facility' means a
17 facility established, constructed, financed, sited and
18 operated in accordance with this Part for the recovery,
19 recycling, treatment, storage during collection and prior to
20 treatment, short term storage after treatment, collection,
21 processing, volume reduction, source separation, transporta-
22 tion used exclusively in connection with the facility, of
23 hazardous waste; and which facility includes several of the
24 following equipments and processes: incinerators, rotary
25 kilns, drum handling, washing and crushing facilities, raw
26 waste tank storage, reduction, neutralization,
27 detoxification, wastewater treatment facilities including
28 settling systems, aerobic digesters, anaerobic digesters,

clarifiers, neutralization facilities, solidifying facilities, evaporators, reactions to facilitate 'reuse' or recycling, analytical capabilities, and other similar appropriate technologies, activities and processes as may now exist or be developed in the future.

(5) 'Hazardous waste generation' means the act or process of producing hazardous waste.

(6) 'Hazardous waste long term storage facility' means any facility or any portion of a facility for storage of the residuals of the treatment of hazardous waste, on or in land and constructed pursuant to the rules adopted under this Part.

(7) 'Hazardous waste management' means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

(8) 'Manifest' means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(9) 'Notice' or similar term or phrase as used in this Part shall include any written notice made in accordance with the provisions of G.S. 1A-1, Rule 4 of the North Carolina Rules of Civil Procedure, or any notice provision under this Article or RCRA.

(10) 'Operated' or any similar term or phrase term or phrase shall include any phase of the planning, application,

siting, financing, construction, operating and maintaining of the hazardous waste facility.

(11) 'Person' means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.

(12) 'Recycling' means the process by which recovered resources are transformed into new products so that the original products lose their identity.

(13) 'Reuse' means a process by which resources are reused or rendered usable.

(14) 'Surface impoundment' or 'impoundment' means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of hazardous waste(s) containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

(15) 'Treatment' means any method, technique or process, including neutralization, designed to change the physical chemical or biological character, form or composition of any solid waste to neutralize the waste or to render the waste nonhazardous or less hazardous, safer for transport amenable for recovery, amenable for storage or reduced in volume. The term includes any activity or processing designed to change the physical form or chemical composition of solid waste to render it nonhazardous.

1 (16) 'Unit of local government' means a county, city,
2 town or incorporated village.

3 "\$143B-470.3. Creation of Commission - membership,
4 appointment, terms and vacancies, officers, meetings and
5 quorum, compensation.

6 The North Carolina Hazardous Waste Treatment Commission
7 is hereby created. It shall be governed by a board composed
8 of nine members and is herein referred to as the Treatment
9 Commission. Members of the General Assembly shall be
10 ineligible for appointment to membership on the Treatment
11 Commission. The Governor shall appoint three members of the
12 Treatment Commission, and the General Assembly shall appoint
13 six members of the Treatment Commission.

14 The initial appointments by the Governor shall be made
15 on or after January 31, 1985, one term to expire January 31,
16 1989 and two terms to expire January 31, 1987. Thereafter,
17 at the expiration of each stipulated term of office all ap-
18 pointments made by the Governor shall be for a term of four
19 years. The members of the Treatment Commission appointed by
20 the Governor shall be selected from the state at large and
21 insofar as practicable shall represent each geographic
22 section of the state and the industrial and environmental
23 interests of the state. Any vacancy occurring in the
24 membership of the Treatment Commission appointed by the
25 Governor shall be filled by the Governor for the unexpired
26 term. The Governor shall have the authority to remove any
27 member appointed by the Governor.
28

1 The General Assembly shall appoint three persons to
2 serve terms expiring January 31, 1987. The General Assembly
3 shall appoint three persons to serve terms expiring January
4 31, 1989. Successors shall serve for four-year terms. Of
5 the three persons whose terms are to expire in 1987, two
6 shall be appointed upon the recommendation of the President
7 of the Senate and one shall be appointed upon the recommen-
8 dation of the Speaker. Of the three persons whose terms are
9 to expire in 1989, two shall be appointed upon the recommen-
10 dation of the Speaker and one shall be appointed upon the
11 recommendation of the President of the Senate. Appointments
12 by the General Assembly shall be made in accordance with
13 G.S. 120-121, and vacancies in those appointments shall be
14 filled in accordance with G.S. 120-122. The members of the
15 Treatment Commission appointed by the General Assembly shall
16 be selected from the state at large and insofar as practica-
17 ble shall represent each geographic section of the state and
18 the industrial and environmental interests of the state.
19 The General Assembly shall have the authority to remove any
20 member appointed by the General Assembly. No member shall
21 serve more than two consecutive four-year terms.

22 The Governor shall appoint from the members of the
23 Treatment Commission the Chairman and Vice Chairman of the
24 Treatment Commission. The Secretary of Commerce or his
25 designee shall serve as secretary of the Treatment Commis-
26 sion. The members of the Treatment Commission shall appoint
27 a treasurer of the Treatment Commission.

1 The Treatment Commission shall meet once in each 60
2 days at such regular meeting time as the Treatment Commis-
3 sion by rule may provide and at any place within the state
4 as the Treatment Commission may provide, and shall also meet
5 upon the call of its chairman or a majority of its members.
6 A majority of its members shall constitute a quorum for the
7 transaction of business. The members of the Treatment
8 Commission shall not be entitled to compensation for their
9 services, but they shall receive per diem and necessary
10 travel and subsistence expense in accordance with G.S.
11 138-5.

12 "§143B-470.4. Powers and duties of the Treatment
13 Commission.

14 (a) In order to enable it to carry out the purposes of
15 this Part, the Treatment Commission shall:

16 (1) Have the powers of a body corporate, includ-
17 ing the power to sue and be sued, to make contracts,
18 and to adopt and use a common seal and to alter the
19 same as may be deemed expedient;

20 (2) Have the authority to make all necessary
21 contracts and arrangements with other authorities of
22 this and other states for the interchange of business,
23 and for such other purposes as will facilitate and
24 increase the business of the North Carolina Hazardous
25 Waste Treatment Commission;

26 (3) Be authorized and empowered to rent, lease,
27 buy, own, acquire, mortgage, or otherwise encumber, and
28 dispose of such property, real or personal, as the

1 Treatment Commission may deem proper to carry out the
2 purposes and provisions of this Part, all or any of
3 them;

4 (4) The Executive Director and with the approval
5 of the Treatment Commission shall appoint such manage-
6 ment personnel as he deems necessary to serve at his
7 pleasure. They shall report to the Executive Director.
8 The salaries of these personnel shall be fixed by the
9 Governor with the approval of the Advisory Budget
10 Commission. The Executive Director or his designee
11 shall appoint employ, dismiss and, within the limits of
12 available funding, fix the compensation of such other
13 employees as he deems necessary to carry out the
14 purposes of this Part. There shall be an executive
15 committee consisting of the chairman of the Treatment
16 Commission and two other members elected annually by
17 the Treatment Commission. The executive committee
18 shall be vested with the authority to do all acts which
19 are authorized by the bylaws of the Treatment Commis-
20 sion. Members of the executive committee shall serve
21 until their successors are elected;

22 (5) Establish an office for the transaction of
23 its business at such place or places as, in the opinion
24 of the Treatment Commission, shall be advisable or
25 necessary in carrying out the purposes of this Part;

26 (6) Be authorized and empowered to create and
27 operate such divisions as the Treatment Commission may
28

1 deem necessary or useful for the furtherance of any of
2 the purposes of this Part;

3 (7) Be authorized and empowered to pay all
4 necessary costs and expenses involved in and incident
5 to the formation and organization of the Treatment
6 Commission, and incident to the administration and
7 operation thereof, and to pay all other costs and
8 expenses reasonably necessary or expedient in carrying
9 out and accomplishing the purposes of this Part;

10 (8) Be authorized and empowered to apply for and
11 accept loans and grants of money from any federal
12 agency or the State of North Carolina or any political
13 subdivision thereof or from any public or private
14 sources available for any and all of the purposes
15 authorized in this Part, and to expend the same in
16 accordance with the directions and requirements at-
17 tached thereto, or imposed thereon by any political
18 subdivision thereof, or any public or private lender or
19 donor, and to give such evidences of indebtedness as
20 shall be required, provided, however, that no indebted-
21 ness of any kind incurred or created by the Treatment
22 Commission shall constitute an indebtedness of the
23 State of North Carolina, or any political subdivisions
24 thereof, and no such indebtedness shall involve or be
25 secured by the faith, credit or taxing power of the
26 State of North Carolina, or any political subdivision
27 thereof; Provided, however, at no time may the total
28 outstanding indebtedness of the Treatment Commission,

1 excluding bond indebtedness exceed a total of five
2 hundred thousand dollars (\$500,000) without approval of
3 the governor, after receiving the advice of the Adviso-
4 ry Budget Commission.

5 (9) Have the authority to appoint an Executive
6 Director, who shall report to the Treatment Commission
7 and serve at the pleasure of the Treatment Commission;

8 (10) Be authorized and empowered to act as agent
9 for the United States of America, or any agency,
10 department, corporation, or instrumentality thereof, in
11 any matter coming within the purposes or powers of the
12 Treatment Commission;

13 (11) Have power pursuant to Article 2 of Chapter
14 150A of the General Statutes to adopt, alter or repeal
15 its own bylaws, rules and regulations governing the
16 manner in which its business may be transacted and in
17 which the power granted to it may be enjoyed, and may
18 provide for the appointment of such committees, and the
19 functions thereof, as the Treatment Commission may deem
20 necessary or expedient in facilitating its business;
21 and

22 (12) Be authorized and empowered to do any and
23 all things necessary to accomplish the purposes of this
24 Part.

25 The property of the Treatment Commission shall not be
26 subject to any taxes or assessments thereon.

27 (b) If no permit to operate a hazardous waste treat-
28 ment facility has been issued to a private operator by June

1 1, 1985, the Treatment Commission shall actively seek
2 private operators of hazardous waste treatment facilities
3 and shall present appropriate sites, as prescribed in G.S.
4 130A-294(g), to those operators. If no permit to operate a
5 hazardous waste treatment facility has been issued to a
6 private operator by January 1, 1986, the Treatment Commis-
7 sion shall, on the basis of criteria and the procedures
8 outlined in G.S. 130A-294(g), select appropriate site(s) and
9 begin proceedings to purchase or if necessary condemn
10 property for such site(s) under the State's power of eminent
11 domain. Condemnation shall be upon the same terms and
12 procedures as set forth in Article 9 Chapter 136 of the
13 General Statutes of North Carolina, except that the Treat-
14 ment Commission shall have the same rights, duties, and
15 responsibilities therein set forth for the North Carolina
16 Department of Transportation. The purposes for which the
17 power of eminent domain is used in this section are to
18 enable a hazardous waste treatment facility to be built
19 which will manage hazardous waste generated by the public or
20 by private industry in making goods for the benefit of the
21 public, and is, therefore, deemed a public purpose for these
22 and related purposes. The Treatment Commission shall then
23 actively seek private operators of hazardous waste treatment
24 facilities and shall contract with at least one operator to
25 purchase the site and construct a hazardous waste treatment
26 facility on one of the sites. If no permit to operate a
27 hazardous waste treatment facility has been issued by June
28 1, 1986, the Treatment Commission shall submit to the

1 General Assembly plans for construction of a facility on one
2 of the sites and shall proceed to begin construction of a
3 facility within one year and seek a private operator to
4 operate the facility. If no private operator can be found,
5 the Treatment Commission shall operate the facility.

6 " (c) The Treatment Commission shall submit to the
7 General Assembly by May 1, 1985 a comprehensive plan for the
8 treatment of hazardous waste in North Carolina, including a
9 plan to provide for a statewide hazardous waste collection
10 system. The Governor's Waste Management Board, the Solid
11 and Hazardous Waste Branch of the Division of Health Servic-
12 es of the Department of Human Resources, and other state
13 agencies and departments shall cooperate with the Treatment
14 Commission in preparation of the plan. If the Treatment
15 Commission, in its report to the General Assembly, indicates
16 that the needs of the state for treatment of hazardous waste
17 are being met, the Treatment Commission shall cease to exist
18 as of October 1, 1985. If not, the Treatment Commission
19 shall report periodically to the General Assembly or, if the
20 General Assembly is not in session, to the Governmental
21 Operations Commission, on progress toward meeting the
22 State's needs.

23 "§143B-470.5. Issuance of Bonds and Notes.

24 (a) As a means of raising the funds needed from time
25 to time in the acquisition, construction, equipment, mainte-
26 nance or operation of any facility, building, structure or
27 any other matter or thing which the Treatment Commission is
28 authorized to acquire, construct, equip, maintain, or

1 operate, all or any of them, including authorized special
2 user projects, the Treatment Commission is hereby author-
3 ized, at one time or from time to time, to borrow money and
4 in evidence thereof to issue bonds, notes and other obliga-
5 tions of the Treatment Commission as provided in this Part.
6 Bonds, notes and other obligations may also be issued to (i)
7 establish such reserves as the Treatment Commission may
8 determine to be desirable including, without limitation, a
9 debt service reserve fund, and (ii) provide for interest
10 during the estimated period of construction and for a
11 reasonable period thereafter and to provide for working
12 capital.

13 The principal of and the interest on such bonds or
14 notes shall be payable solely from the funds herein provided
15 for such payment. Any such notes may be made payable from
16 the proceeds of bonds or renewal notes or, in the event bond
17 or renewal note proceeds are not available, such notes may
18 be paid from any available revenues, income or assets of the
19 Treatment Commission. The bonds or notes of each issue
20 shall be dated and may be made redeemable before maturity at
21 the option of the Treatment Commission at such price or
22 prices and under such terms and conditions as may be deter-
23 mined by the Treatment Commission. Any such bonds or notes
24 shall bear interest at such rate or rates, including vari-
25 able rates, as may be determined by the Treatment Commis-
26 sion. Notes shall mature at such time or times not exceed-
27 ing 10 years from their date or dates and bonds shall mature
28

1 at such time or times not exceeding 40 years from their date
2 or dates, as may be determined by the Treatment Commission.

3 (b) Prior to the sale and delivery of any bonds or
4 notes by the Treatment Commission, the Governor, after
5 receiving the advise of the Advisory Budget Commission,
6 shall approve the general purposes of and the general
7 security provisions for any such bonds or notes. Such bonds
8 or notes may be sold in such manner, either at public or
9 private sale, and for such price as the Treatment Commission
10 shall determine. Bonds or notes may be issued under the
11 provisions of this Part without obtaining, except as other-
12 wise expressly provided in this Part, the consent of any
13 department, division, commission, board, body, bureau or
14 agency of the State, and without any other proceedings or
15 the happening of any conditions or things other than those
16 proceedings, conditions or things which are specifically
17 required by this Part and the provisions of the resolution
18 authorizing the issuance of such bonds or notes or the trust
19 agreement securing the same.

20 (c) In the discretion of the Treatment Commission any
21 obligations issued under the provisions of this Part may be
22 secured by a trust agreement by and between the Treatment
23 Commission and a corporate trustee, which may be any trust
24 company or bank having the powers of a trust company within
25 or without the State and, in the case of an authorized
26 special user project, a deed of trust of which the trustee
27 may be an individual who is a resident of the State. It
28 shall be lawful for any bank or trust company incorporated

1 under the laws of the State which may act as depository of
2 the proceeds of obligations, revenues or other money under
3 this Part to furnish such indemnifying bonds or to pledge
4 such securities as may be required by the Treatment Commis-
5 sion. The pledge of any assets, income or revenues of the
6 Treatment Commission to the payment of the principal of or
7 the interest on any obligations of the Treatment Commission
8 shall be valid and binding from the time when the pledge is
9 made and any such assets, income or revenues shall immedi-
10 ately be subject to the lien of such pledge without any
11 physical delivery thereof or further act, and the lien of
12 any such pledge shall be valid and binding as against all
13 parties having claims of any kind in tort, contract or
14 otherwise against the Treatment Commission, irrespective of
15 whether such parties have notice thereof.

16 (d) The resolution authorizing any obligations or the
17 trust agreement securing the same may provide that any
18 moneys held pursuant thereto may be temporarily invested
19 pending the disbursement thereof and shall provide that any
20 officer with whom, or any bank or trust company with which,
21 such moneys shall be deposited shall act as trustee of such
22 moneys and shall hold and apply the same for the purposes
23 hereof, subject to such regulations as this Part and such
24 resolution or trust agreement may provide. Any such moneys
25 or any other moneys of the Treatment Commission may be
26 invested as provided in G.S. 159-30 or any successor provi-
27 sion thereof.
28

(e) Obligations issued under the provisions of this Part are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of the State is now or may hereafter be authorized by law.

(f) The Treatment Commission is hereby authorized to provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which shall have been issued under the provisions of this Part, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and, if deemed advisable by the Treatment Commission, for any corporate purpose of the Treatment Commission. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Treatment Commission in respect of the same shall be governed by the provisions of this Part which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

1 Refunding obligations may be sold or exchanged for
2 outstanding obligations issued under this Part and, if sold,
3 the proceeds thereof may be applied, in addition to any
4 other authorized purposes, to the purchase, redemption or
5 payment of such outstanding obligations.

6 (g) Any obligations issued by the Treatment Commission
7 under the provisions of this Part, their transfer and the
8 income therefrom (including any profit made on the sale
9 thereof), shall at all times be free from taxation by the
10 State or any local unit or political subdivision or other
11 instrumentality of the State, excepting inheritance or gift
12 taxes.

13 (h) Obligations issued under the provisions of this
14 Part shall not be deemed to constitute a debt, liability or
15 obligation of the State or of any other public body in the
16 State secured by a pledge of the faith and credit of the
17 State or of any other public body in the State, respective-
18 ly, but shall be payable solely from the revenues, income or
19 assets of the Treatment Commission pledged thereto. Each
20 obligation issued under this Part shall contain on the face
21 thereof a statement to the effect that the Treatment Commis-
22 sion shall not be obligated to pay the same or the interest
23 thereon except from the revenues, income or assets pledged
24 therefor and that neither the faith and credit nor the
25 taxing power of the State or of any other public body in the
26 State is pledged to the payment of the principal of or the
27 interest on such obligation."
28

1 Sec. 2. G.S. 130A-290 is amended by adding three
2 additional definitions to read:

3 (1a) "Comprehensive hazardous waste treatment facili-
4 ty" means a facility designated as such by the Governor's
5 Waste Management Board; having met the following criteria:

6 a. It is a commercial facility that accepts hazardous
7 waste from the general public for treatment;

8 b. It has the capacity and capability to treat and
9 dispose of hazardous waste on at least an intrastate
10 regional basis; and

11 c. Its location will substantially facilitate treat-
12 ment of hazardous waste for the state of North Caroli-
13 na.

14 "(8a) 'Landfill' means a disposal facility or part of
15 a disposal facility where waste is placed in or on land and
16 which is not a land treatment facility, a surface impound-
17 ment, an injection well, a hazardous waste long term storage
18 facility or a surface storage facility."

19 "(12a) 'Reuse' means a process by which resources are
20 reused or rendered usable."

21 Sec. 3. The first sentence of G.S. 130A-293(a) is
22 amended by deleting the words "and the Governor have" and
23 substituting the word "has".

24 Sec. 4. G.S. 130A-293(b) is rewritten to read:

25 "(b) When a hazardous waste facility would be prevent-
26 ed from construction or operation by a county, municipal or
27 other local ordinance(s), the developer or operator of the
28 facility or the Hazardous Waste Treatment Commission may

petition the Governor's Waste Management Board to review the matter. After receipt of a petition, the Board shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall either approve or disapprove the establishment and operation of the facility. If the Board makes the four findings set forth below, the Board shall approve the establishment of the facility. If the Board does not make all of the four findings set forth below, the Board shall disapprove the establishment or operation of the Facility. The decision of the Board shall be final unless a party to the action shall pursuant to G.S. 7A-29, file a written appeal within 30 days of the date of the decision. The record on appeal shall include all materials and information submitted to or considered by the Board in accordance with subsection (c) of this section. The scope of judicial review shall be limited to questions of abuse of discretion. Before approving the facility, the Board must make the following findings:

(1) That the proposed facility is needed in order to establish adequate capability for the management of hazardous waste generated in this State and serves the interest of the citizens of the State as a whole;

(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all state and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance(s);

(3) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and

(4) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility developer or operator has taken or consented to take any reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable ordinance(s).

The Board's written decision shall include a complete transcript of the hearing, all written material presented to the Board regarding the site location and the specific findings required in this subsection and any minority positions on the recommendation and the specific findings required in this subsection. The Board's decision shall be in writing and shall identify the material submitted to the Board plus any additional materials used in arriving at the decision."

Sec. 5. G.S. 130A-293(c) is amended by rewriting the seventh sentence to read: "No later than 60 days after the hearing, the Board shall approve or disapprove the facility." and by deleting the remainder of the subsection.

Sec. 6. G.S. 130A-294(f) is amended by adding the following new paragraphs at the end of the subsection to read:

"Within one hundred and eighty (180) days after receiving an application for a permit or for an

1 amendment to an existing permit for a comprehensive
2 hazardous waste treatment facility, the Department
3 shall approve or disapprove the application. In acting
4 upon the application, the Department shall consider
5 land use, zoning, buffer zones, utility availability,
6 proximity to sources of waste, civil defense, fire
7 safety, transportation and access, existing road
8 network, general considerations of the public's health
9 and safety, and any other objective factors reasonably
10 related and relevant to the proper siting and operation
11 of the comprehensive hazardous waste treatment facili-
12 ty; and may impose action responding to these factors
13 as conditions in the permit; provided, however, if the
14 Department disapproves the application, the disapproval
15 shall set forth specifically the reasons for the denial
16 and the applicant shall have the right to appeal the
17 disapproval as provided herein."

18 Sec. 7. G.S. 130A-294 is amended by adding the
19 following additional subsections:

20 "(g) The Commission shall develop and adopt criteria
21 and standards to be considered in location and permitting of
22 a hazardous waste facility by January 31, 1985. The stan-
23 dards and criteria shall be developed through public partic-
24 ipation, shall be enforced by the Department and shall
25 include, in addition to all applicable state and federal
26 rules and regulations, consideration of:
27
28

(1) Acceptability within the community where the facility is to be located or steps which should be taken if community acceptance is not forthcoming;

(2) Hydrological and geological factors such as flood plains, depth to water table, groundwater travel time, proximity to public water supply watersheds, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, seismic activity, slope, mines and climate;

(3) Natural resources such as wetlands, endangered species habitats, proximity to parks, forests, wilderness areas and historical sites, and air quality;

(4) Local land use whether residential, industrial, commercial, recreational, agricultural, and proximity to incompatible structures such as schools and airports;

(5) Transportation factors, such as proximity to waste generators and to population, route safety and method of transportation;

(6) Aesthetic factors such as the visibility, appearance and noise level of the facility.

"(h) Rules adopted by the Commission shall be subject to the following requirements:

(1) No hazardous waste landfill or hazardous waste long term storage facility shall be established until at least one hazardous waste treatment facility is fully operational.

(2) Hazardous waste must be treated prior to disposal in North Carolina and prior to being placed in a hazardous waste long term storage facility in North Carolina. Long term retrievable storage should be used for the storage of the residual or ashes of other treatment of sufficiently low toxicity as to present no significant health or safety hazard in the event of leakage from the facility. Hazardous waste in long term retrievable storage shall be detoxified as soon as the Commission for Health Services determines based upon a preponderance of the evidence that the technology is available at a reasonable cost. The Commission shall determine the extent of waste treatment required before hazardous waste can be disposed of in a hazardous waste landfill facility.

(3) Any hazardous waste landfill facility hereafter constructed in this State shall meet, at the minimum, the standards of construction imposed by federal regulations adopted under the Federal Act at the time the permit is issued.

(4) No hazardous waste landfill facility or polychlorinated biphenyl landfill facility shall be located within 25 miles of any other hazardous waste landfill facility or polychlorinated biphenyl landfill facility, or within 25 miles of a comprehensive hazardous waste treatment facility as defined in G.S. 130A-290(1a).

1 (5) The following will not be disposed of in a
2 hazardous waste landfill facility: ignitables as
3 defined in the federal act, polyhalogenated biphenyls
4 of 50 ppm or greater concentration and free liquids
5 whether or not containerized.

6 (6) The underground storage of a hazardous waste
7 landfill or long term storage facility shall have at a
8 minimum the following: a leachate collection and
9 removal system above an artificial impervious liner of
10 at least thirty (30) mils in thickness, a minimum of
11 five (5) feet of clay or clay-like liner with a maximum
12 permeability of 1.0×10^{-7} centimeters per second
13 (cm/sec) below said artificial liner, and a leachate
14 detection system immediately below the clay or
15 clay-like liner.

16 (7) Hazardous waste shall not be stored at a
17 hazardous waste treatment facility for over 90 days
18 prior to treatment or disposal.

19 (8) The Commission shall consider any hazardous
20 waste treatment process proposed to it, if the process
21 lessens treatment cost or improves treatment over then
22 current methods or standards required by the Commis-
23 sion.

24 "(i) The Department shall submit to the General
25 Assembly by February 1, 1985 plans:

26 (1) to monitor and regulate all generators of
27 more than 100 kilograms per month of hazardous waste;
28 and

(2) to locate, catalogue and monitor all existing hazardous waste impoundments and surface impoundments, including inactive hazardous waste disposal sites and 'orphan dumps,' including those owned or operated by units of state and local government, and shall submit to the General Assembly by February 1, 1985 a plan to bring all of these under legal requirements in effect on February 1, 1985, including a timetable for compliance. This plan shall include recordation of each of these sites in the office of the Register of Deeds in the county where it is located."

Sec. 8. G.S. 130A-295 is amended by designating the present language as subsection (a) and adding new subsections (b) and (c) to read:

"(b) The operator shall deposit in trust with the city or county government one half of one percent (0.5%) of the income of the hazardous waste treatment facility, payable within 30 days of each calendar quarter, until the total shall equal an amount of two hundred and fifty thousand dollars (\$250,000.00). As used herein, income means gross operating revenues less refunds, rebates and allowances. This fund shall be available to the city or county in which the hazardous waste treatment facility is located for the purpose of defraying the cost of any cleanup which might be required at the hazardous waste treatment facility. The city or county may, in its discretion, use up to fifty thousand dollars (\$50,000) of this total to establish an Emergency Response Team, trained and equipped to handle

hazardous waste spills and to respond to accidents at hazardous waste treatment facilities. Financial records will be subject to the audit of the local government for two years after any fee is paid. Any errors in the payment shall be corrected by credit or debit in the next payment or payments by the operator of the hazardous waste facility. If the North Carolina Hazardous Waste Treatment Commission owns and operates the facility, the North Carolina Hazardous Waste Treatment Commission, consistent with the resources available, shall compensate the local government for expenses incurred due to location of the facility. This compensation shall not exceed the amount of ad valorem tax revenues the local government would have received if the facility were privately owned. Nothing herein shall be construed to limit in any way funds which might be available to local government from other sources.

"(c) Although no one is required to use a hazardous waste treatment facility, use by North Carolina industry is to be encouraged. Nothing in this act shall be deemed to prevent any hazardous waste or other waste generated or located in North Carolina from being removed from the state for disposal, treatment or storage."

Sec. 9. G.S. 143B-216.13 is amended by adding at the end of subdivision (7) the following:

"The Board shall provide a report to the General Assembly by February 1, 1985, to include:

1 a. An analysis of the size, type and number of hazard-
2 ous waste facilities needed in North Carolina and a
3 plan to meet these needs;

1 b. an analysis of the system of collection of hazard-
5 ous waste in North Carolina, recommendations as to how
6 that system might be improved and a plan to implement
7 these recommendations; and

8 c. an analysis of the cost incurred by local govern-
9 ment because of the presence of a hazardous waste
10 facility, a hazardous waste landfill facility or a
11 comprehensive hazardous waste treatment facility."

12 and by adding a new subdivision to read:

13 "(17) The Board shall certify comprehensive hazardous
14 waste treatment facilities which meet the criteria pre-
15 scribed in G.S. 130A-290(1a)."

16 Sec. 10. This act is effective upon ratification.
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